

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SECOND AMENDMENT ARMS (a d/b/a of)	
R. Joseph Franzese), R. JOSEPH FRANZESE,)	
individually and d/b/a SECOND AMENDMENT)	
ARMS, and TONY KOLE,)	
)	Case No: 1:10-CV-4257
Plaintiffs,)	
)	Hon. Robert M. Dow, Jr.
v.)	U.S. District Court Judge
)	
CITY OF CHICAGO, a municipal corporation,)	
RAHM EMANUEL, in his official capacity as)	
Mayor of the City of Chicago, GARRY)	Hon. Sheila M. Finnegan
McCARTHY, Superintendent of Police of the City)	U.S. Magistrate Judge
of Chicago, and SUSANA MENDOZA, City Clerk)	
of the City of Chicago,)	
)	
Defendants.)	

MOTION FOR LEAVE TO FILE RESPONSE TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT
AND
LOCAL RULE 7.1 MOTION TO FILE BRIEF IN EXCESS OF FIFTEEN PAGES

NOW COME the Plaintiffs, SECOND AMENDMENT ARMS (a d/b/a of R. Joseph Franzese), R. JOSEPH FRANZESE, individually and d/b/a Second Amendment Arms, and TONY KOLE, and, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure (F.R.Civ.P. 15(a)(2)), move this Honorable Court to grant Plaintiffs leave to file their Response to Defendant's Motion for Summary Judgment and, pursuant to Local Rule 7.1, to file said Memorandum in excess of 15 pages and a L.R. 56 (b)(3)(C) Statement of Additional Undisputed Facts containing in excess of 40 additional facts. A redacted version of the memorandum Defendants seek to file

is attached hereto as Exhibit A. Plaintiffs also respectfully move to file said documents under seal. In support thereof, Plaintiffs state as follows:

1. Defendants have moved for summary judgment pursuant to F.R.Civ.P. 56 and to exclude the testimony of Plaintiffs' expert witness pursuant to F.R.E. 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The Court has granted Defendants' L.R. 7.1. request to file a Memorandum that was 33 pages. (Dkt. #256; *See also* Dkt. #257).

2. Under L.R. 7.1, Plaintiffs' Response brief cannot exceed 15 pages in length without the approval of this Court.

3. Defendants' Motion raises two complicated issues: (1) Plaintiffs' claim for lost profits resulting from the City's 2010-2014 ban on gun stores and (2) a Second Amendment challenge to the City's ban on laser sights. Plaintiffs' respectfully submit that, in order to address all issues adequately, Plaintiffs require a total of 31 pages.

4. Plaintiffs attempted to keep their Response as brief as possible while addressing all the issues.

5. Further, Plaintiffs wish to submit a Statement of Additional Undisputed Facts. Plaintiffs cannot file a statement of facts that exceeds 40 facts without leave of Court. Given the number and complexity of the issues, however, Plaintiffs request leave to file a Statement of Additional Undisputed Facts

numbering 66. As with the Response, Plaintiffs attempted to keep the Statement of Additional Undisputed Facts as concise as possible.

6. Plaintiffs also respectfully request that the Court grant leave to file the following documents under seal pursuant to L.R. 26.2: their Response to Defendant's Rule 56.1 Statement of Undisputed Material Facts; their Rule 56.1 Statement of Additional Undisputed Facts ("SAUF"); Summary Judgment Exhibits Exhibits 2, 10, 11, 12, 14; and Plaintiffs' Response to Defendants' Motions. On October 12, 2016, this Court entered an agreed confidentiality order in this action, Dkt. # 202-1, which was updated on May 2, 2019, Dkt. # 249. Pursuant to that order, the parties may designate certain categories of documents as confidential by including the appropriate designation. The documents cited above in this paragraph have either been designated as confidential by Plaintiffs, or reference a document Plaintiffs have designated as confidential. Therefore, Plaintiffs seek leave to file the documents under seal so as to comply with the agreed confidentiality order.

7. Local Rule 26.2(c) states that any party wishing to file a document or portion of a document electronically under seal must: "(1) provisionally file the document electronically under seal; (2) file electronically at the same time a public-record version of the brief, motion or other submission with only the sealed document excluded; and (3) move the court for leave to file the document under seal."

8. Plaintiffs are complying with L.R. 26.2 by filing the documents listed in paragraph 5 under seal and filing a public-record version of their Response to

Defendants' Motion (1) for Summary Judgment and (2) To Exclude the Testimony of Robert Southwick and all non-confidential exhibits, and filing redacted versions of their SUMF in support of their motion.

9. Finally, Plaintiffs have a pending Motion for Leave to File and for Excess Pages under L.R. 7.1. Plaintiffs will be severely prejudiced if they are unable to present their arguments in response to Defendant's Motions to the Court, and request leave to file the attached proposed Response and accompanying documents, *instantly*.

10. Defendant will not be prejudiced by the granting of this Motion.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request that the Court grant them (A.) leave to file a 31-page brief in Response to Defendants' Motion for Summary Judgment and To Exclude the Testimony of Robert Southwick in the form attached hereto as Exhibit A; (B.) leave to file a Statement of Additional Undisputed Facts that contains 66 facts; (C.) leave to file the documents listed in paragraph 5 above under seal, and (D.) such further relief as the Court deems just and appropriate.

Dated: August 21, 2019

Respectfully submitted,

By: /s/ David G. Sigale
Attorney for Plaintiffs

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CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING

The undersigned certifies that:

1. On August 21, 2019, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system;
2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale
Attorney for Plaintiffs

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